Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the	)	
Cable Television Consumer Protection	)	CS Docket No. 96-60
and Competition Act of 1992	)	
Rate Regulation	)	
	)	
Leased Commercial Access	)	

COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION

Eric E. Breisach
Christopher C. Cinnamon
Howard & Howard
107 W. Michigan Ave., Suite 400
Kalamazoo, Michigan 49007
(616) 382-9711

Attorneys for the
Small Cable Business Association

May 15, 1996

TABLE OF CONTENTS

SUMMARY

The proposed leased access rules remind SCBA of the onerous rate regulation rules that placed disparate burdens on small cable operators three years ago. Like rate regulation under the 1992 Cable Act, the leased access rules display a total disregard for the unique cost structure and operating practices of small cable -- considerations that the Commission has acknowledged and dealt with fairly in other proceedings.

The financial cost of implementing leased access burdens can overwhelm and even bankrupt small cable. The Commission's proposals require small cable to subsidize the operations of leased access programmers in violation of both the statute and express Congressional intent. SCBA sets forth its specific concerns and alternatives to minimize the burdens on small cable.

♦ **Commission Proposals Could Cost Small Cable $24 Million To Establish Compliance Systems.** Small cable is like the Dolphin snagged by the Commission's large driftnet. The Commission's adoption of new rules and proposal of other industry-wide rules to advance the development of leased access can ensnare and kill small cable in the process. The vast majority of small cable has not received a single leased access inquiry over the past 11 years. Further, small cable is not vertically integrated with programmers, lessening the need for rigid regulation. Nevertheless, the Commission adopts and proposes regulations that could trigger a $24 million immediate compliance cost for small cable.

♦ **Small Cable Would Subsidize Leased Access Under Commission's Proposals.** The Commission's leased access formula is fatally flawed as it does not charge leased access programmers for the value conferred. SCBA urges the Commission to consider comprehensive overhauls of the formula. In all events, however, the Commission must ensure that it incorporates the following concerns unique to small cable in a final solution:

- **Free Leased Access.** Because systems with fewer than 15,000 subscribers cannot typically afford advertising insertion equipment, they have no advertising revenues. The absence of advertising revenues for many small systems requires them to provide **free** leased access.

- **High Per System Transaction Costs.** The Commission will not generally allow recovery of the cost to investigate and enter into leased access agreements. These costs will average $2,000 per full time contract or $4.00 per subscriber for a 500 subscriber system. Operators are likely to have multiple contracts on multiple headends because of low rates. Annual transaction costs could top $100,000 per system, or $200 per subscriber for a 500 subscriber system.

- **High Technology Costs.** Most small systems will have to invest $8,500 to $12,000 in headend costs to add each channel of leased access programming. The regulations must allow full recovery of these amounts, they must guarantee recovery to avoid saddling subscribers with leased access costs.

- **Operating Cost Adjustment.** Subscriber revenue is not an appropriate surrogate for small system operating costs. Operators must be entitled to recover all operating costs as reflected on FCC Form 1230.

♦ **Small Systems Use Market Pricing.** Because the Commission's formula results in free access, the initial channel quota will likely be immediately consumed, forcing all other leased access programmers to pay market rates. The Commission could eliminate most small system issues if it simply adopted market price as the pricing mechanism for small systems.

♦ **Phase-In Channel Quota Requirements For Small Cable.** Because leased access programmers largely ignored small cable for 11 years, many small systems developed strong programming line-ups to meet subscriber demand. The Commission should phase-in the requirement to bump existing programming to avoid massive disruption of small system line-ups.

♦ **Information Disclosure Requirements Require Modification.**

- **Small Cable Should Respond Only To Bona Fide Request.** The initial request for leased access will result in substantial cost to craft a reply. Small cable should not be obligated to respond to a request such as one recently sent via bulk mail SCBA believes was sent to most of the 11,500 cable systems. No leased access programmer can individually and concurrently negotiate and implement programming to 11,500 cable systems.

- **Commission Regulations Regarding Information Disclosure Require Modification.** The Commission's recently adopted regulations requiring operators to respond to leased access inquiries within seven days and provide specific information must be modified to reflect the alternatives suggested by SCBA. For example, rates can only be determined after an operator receives specific information from the programmer.

The Commission has significantly strayed from its recent record of careful consideration of small system implications. SCBA offers reasonable solutions to the disparate impact on small systems. SCBA strongly urges the Commission to adopt these alternatives as soon as possible.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the	)	
Cable Television Consumer Protection	)	CS Docket No. 96-60
and Competition Act of 1992	)	
Rate Regulation	)	
	)	
Leased Commercial Access	)	

COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION

I. INTRODUCTION

A. The Small Cable Business Association

The Small Cable Business Association ("SCBA"), through counsel, files these comments to assist the Commission in its consideration of certain proposed leased access rules on small cable systems and small cable companies. SCBA is well know to the Commission as a participant and strong advocate over the past three years for the needs and concerns of small cable in most rulemaking proceedings implementing the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

SCBA grew from a grass-roots effort by small operators to cope with the onerous burdens imposed by the Commission's implementation of the 1992 Cable Act. From the meeting of small operators in May 1993 where SCBA was spontaneously formed, SCBA has grown into a proactive force, currently having over 350 members.

B. SCBA's Leased Access Filings

The new leased access rules adopted by the *Order on Reconsideration* and the rules proposed by the *Further Notice of Proposed Rulemaking* place disparate burdens not required or permitted by statute on small cable. SCBA sets forth a comprehensive review and proposals to modify the leased access rules for small cable in a series of filings:

1. **Comments.** SCBA provides alternatives to apply more fairly the rate formula and channel set-aside requirements on small cable. SCBA also suggests certain threshold showings by programmers before small cable must provide leased access information.

2. **Comments on the Initial Paperwork Reduction Act of 1995 Analysis.** SCBA asks the Office of Management and Budget ("OMB") to deny approval of the Commission's information gathering rules that place harsh and unnecessary burdens on small cable. SCBA also asks OMB to consider that the information gathering rules did not receive adequate public comment as they were promulgated without notice and comment in violation of the Administrative Procedures Act and without compliance with the Regulatory Flexibility Act.

3. **Comments on the Initial Regulatory Flexibility Act Analysis ("IRFA").** SCBA comments on the significant deficiencies of its IRFA. Had the Commission properly prepared its IRFA, the problems created by the Commission's proposals would likely have been noticed by Commission staff as it constructed the *Notice of Proposed Rulemaking*.

II. THE PROPOSED MAXIMUM RATE FORMULA FAILS TO PROPERLY INCLUDE ALL COSTS, RESULTING IN HIGH PER SUBSCRIBER UNREIMBURSED COSTS FOR SMALL SYSTEMS.

A. The Rate For Leased Access Must Fully Compensate Small Cable.

SCBA agrees with the Commission's underlying premise of its proposed leased access rules:

> [T]he maximum rate should be based on the operator's reasonable costs (i.e., the costs of operating the cable system plus the additional costs related to leased access), including a reasonable profit.
>
> ****
>
> We believe that leased access can be promoted without providing a subsidy to programmers by establishing a pricing scheme that is based on costs. Programmers who cannot afford the rate will not and should not gain access because they would impose a financial burden on operators.[1]

Congress expressed similar sentiment when it first established the commercial leased access requirements as part of the Cable Communications Policy Act of 1984 ("1984 Cable Act"). Congress explicitly stated that the implementation of the leased access requirements should not adversely affect the economic position of cable operators:

> The Committee's overriding goal in adopting this section is divorcing cable operator editorial control over a limited number of channels. In doing so, the Committee does not intend to adversely affect the cable operator's economic position, since it is not the cable operator's exercise of any economic power, but his exercise of editorial control, which is of concern to the Committee.****If not properly implemented, leased access requirements

[1]*Order on Reconsideration of The First Report and Order and Further Notice of Proposed* Rulemaking, in the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Leased Commercial Access, MM Docket No 92-266 redesignated as CS Docket No 96-60 (released March 29, 1996) *(Reconsideration Order*") at ¶66.

could adversely impact the economic viability of a cable system, thereby hurting the public.[2]

As discussed below, the rate formula proposed by the Commission omits key transactional costs that are often fixed in nature (i.e., do not vary with the size of the cable system). Omission of fixed costs may have a de minimis impact on large cable systems, however, it may have a high per subscriber cost for small cable.

B. The Commission's Formula Does Not Compensate Small Systems As It Requires Them To Provide Free Access.

1. Overview Of The Commission's Formula.

The Commission's leased access rate formula accumulates two baskets of costs. The first aggregates net opportunity costs. These costs include *some* of the costs incurred by the system as a result of carrying a leased access program, netted against cost savings by not carrying alternative programming.[3] The Commission specifically proposes including the following components in the computation of opportunity cost:

a. Lost Advertising Revenue. Revenue earned from advertising on a programming service bumped to provide a channel to a leased access programmer;[4]

---

[2]Joint Committee Report on the Cable Communications Policy Act of 1984, House Report No. 98-934 ("*1984 Joint Committee Report*") at 51.

[3]*Reconsideration Order* at ¶79.

[4]*Reconsideration Order* at ¶80.

b. **Lost Commission Revenue.** Commissions from shopping channels bumped to provide a channel for leased access programming;[5] and

c. **Technology Costs.** The cost of technology required by the leased access programmer (e.g., scrambling costs for a premium channel offering).

The Commission also proposes offsetting these costs with the savings an operator realizes by no longer incurring program license fees for the program bumped by the operator.[6]

The second basket consists of operating costs. Although the Commission recognizes the operator's need to recover operating costs, it uses subscriber revenue as a proxy for the operating costs of tiered channels.[7]

The Commission proposes computing the weighted average of all channel costs (i.e., tiered and premium) and using the result as a single rate to be charged a programmer for leased access.

2. The Proposed Rate Formula Precludes Small Systems From Charging Reasonable Rates For Leased Access.

a. Full-Time Rates.

Application of the Commission's rate formula to small cable will often result in "free" leased access to tiered channels.[8] This result occurs because many small operators

---

[5]*Reconsideration Order* at ¶82.

[6]*Reconsideration Order* at ¶83.

[7]*Reconsideration Order* at ¶77.

[8]Even if the Commission averages the cost of tiered and premium channels, the artificially low rate for tiered channels lowers the average cost.

do not have "opportunity costs" as defined by the Commission's proposal. The principal opportunity cost identified by the Commission is lost advertising revenue. Many smaller systems cannot offer advertising insertion. These systems have an insufficient subscriber base to recover the fixed cost of installing headend insertion equipment. Of the 11,500 cable systems, only 2,600[9] (22.6%) have advertising insertion capabilities. These insertible systems serve, however, serve 95% of all cable subscribers[10] (56.3[11] million cable households). This subscriber coverage can only be obtained if the largest systems provide advertising insertion. Systems with 15,000 or fewer subscribers rarely offer advertising insertion.

Example 1. Consider the following 500 subscriber system's leased access rates.[12] Assume the system did not bump any home shopping services, and because of its small number of subscribers, cannot afford the headend equipment necessary to insert local advertising. Under the Commission's leased access cost formula, **this system has no opportunity costs**. The Commission presumes that its subscriber revenues offset the system's operating costs and that the operator has no incremental costs associated with negotiating the agreement. This small system's leased access rate is **zero**. If applied

---

[9]Cable Advertising Bureau, National Research Department. Warren Publishing's *Television &Cable Factbook No. 64* at I-80 supports this amount reporting only 2,852 systems with local advertising insertion capabilities.

[10]Percentage based on 59,288,526 cable subscribers nationally per Warren Publishing's *Television and Cable Factbook No. 64* at I-81.

[11]Cable Advertising Bureau, National Research Department.

[12]To demonstrate the fundamental unfairness of the tiered channel leased access rate, we examine the tiered channel rate in isolation, without considering the impact of averaging rates with premium channel rates.

literally, assuming a low average monthly programming fee for bumped programming of $0.05 per subscriber per channel, **the formula results in a negative leased access rate of $25 per month**. Congress did not intend that an operator should have to both open its system to leased access and pay the leased access programmer for providing access.

A leased access rate of zero directly conflicts with the federal statute on two points. First, the statute provides that the Commission shall determine the "maximum **reasonable** rate" an operator may charge for commercial leased access.[13] The proposed rate of zero is not reasonable because it fails to recognize the value conferred by the cable operator to the leased access programmer.[14] Second, offering "free" leased access equates commercial leased access with public, education and government ("PEG") access. This result conflicts with Congressional intent:

> The term commercial use is employed to distinguish from public access uses which are generally **afforded free** to the access user, whereas third party leased access envisioned by this section will result from a commercial arrangement between the cable operator and the programmer with respect to the rates, terms and conditions of the access use.[15]

The current formula concerns SCBA because it will not allow small systems to impute a fee for tiered channel access, even if averaged with premium channel costs, the formula will result in a low, even de minimis per channel rate.

---

[13]47 U.S.C. §)(4)(A)(I) (emphasis added).

[14]For example, the ability to deliver programming to cable households without incurring any capital, marketing or other costs associated with developing a delivery system and without putting investment at risk.

[15]1984 *Joint Committee Report* at 48 (emphasis added).

b. Part-Time Rates

Not only will small system rates be low for full-time carriage, but when the low full day rate is partitioned, the per hour or half-hour rates are often far lower than current advertising rates. This creates the possibility for a flood of 30 and 60 minute one-time access requests.

Example 2. Assume that the operator in Example 1 had technology expenses of $1,200 that could be recovered at the rate of $100 per month,[16] making the net recoverable rate $75 per month.[17] This rate represents the cost of leasing an entire channel for 24-hours per day, seven days per week for one month. On a daily basis, the rate becomes only $2.50. If allocated evenly over a 24 hour period, the rate becomes $0.10 per hour.

Many small operators are considering adding channels such as the Golf and NewsTalk channels which offer 30 minute ad insertion availabilities to allow operators to insert infomercials.[18] Infomercial availabilities may allow smaller systems to afford advertising insertion equipment. Those few SCBA members with ad insertion capabilities currently earn a market rate of $100 to $300 per 30-minute infomercial cablecast. In our Example 2, the tier rate for a 30 minute infomercial submitted under a leased access request

---

[16]SCBA addresses the issue of how technology costs should be recovered in section II(D), *infra*.

[17]$100 technology cost less program cost savings of $25 from bumped programming.

[18]Contrasted to most cable networks that allow one to two minutes of insertions per hour of programming.

is $0.05.[19] Even though these new channels may provide significantly higher advertising revenue, unless the operator commits to delete the channel to provide leased access capacity, the rate formula will not include those advertising revenues. Even if a high advertising revenue channel were included in the computation, the revenue when averaged over the four or more channels allocated to leased access dilutes the impact of the advertising revenues on the maximum permitted rate.

Under the proposed formula, many types of advertisers will switch over to leased access. Similarly, special interest groups may find leased access an equally or even more desirable outlet for their programs than PEG access. The low cost of leased access, especially for small systems with no advertising revenue, will sharply increase demand for leased access requests on small systems.

C. The Definition of "Opportunity Costs" Omits An Essential And Substantial Cost Of Small Systems.

1. The Commission Prevents Recovery Of Significant Transaction Costs.

The Commission omits transaction costs from the definition of "opportunity costs" based on a flawed assumption. The Commission tentatively concluded that the cost of negotiating and administering a full-time leased access programming contract equals the comparable cost to procure a non-leased access programming contract. This assumption is wrong. This assumption fails to recognize that leased access transactions fundamentally differ from other programming transactions.

[19]SCBA desegregates the rates for tiered and premium services to provide comparable amounts. If SCBA compared the cost of an infomercial cablecast on a tier to the average leased access cost, the impact of the premium tier's higher cost would distort the analysis.

a. Higher Total Transaction Costs Occur Due To More Frequent Execution Of Leased Access Agreements.

The proposed formula will increase demand for leased access by lowering or eliminating its cost. As a result, small cable will have to frequently negotiate leased access agreements. The average small cable programming agreement runs for a term of three to five years. Leased access contracts will typically cover much shorter terms. Consequently, even if a leased access provider seeks an entire channel, an operator will have to negotiate and execute a number of leased access agreements over the typical three to five year term of a standard programming contract. This will result in higher transaction costs than considered by the Commission when reaching its preliminary conclusion.

The transaction costs escalate geometrically when part-time carriage is considered. Part-time carriage, especially for one-time showings of programs, can result in multiple leased access agreements each day. The Commission proposes to allow operators to:

> [C]harge a part-time leased access programmer the actual incurred costs of negotiating and administering the programmer's part-time contract which exceed what normally would be spent in negotiating and administering a full-time leased access programming contract.[20]

The Commission's proposal is insufficient. Because part-time and/or short term agreements require more frequent leased access agreements, the Commission must allow the full cost of the agreements, not their incremental cost, to be recoverable through the leased access rate determined by the Commission's formula. For example, if the full cost of negotiating and administering a full-time standard programming agreement is $2,000 and the cost of a part-time agreement is $2,500, the full $2,500 must be recoverable, not just the

[20]*Reconsideration Order* at ¶95.

$500 increment. To do otherwise would cause cable operators to subsidize leased access programmers.

b. Higher Total Transaction Costs Will Occur Because Leased Access Can Be Negotiated On A System Rather Than Company-Wide Basis.

A fundamental difference between leased access and traditional cable programming reveals a second major flaw in the Commission's assumptions regarding transaction costs. Operators negotiating traditional cable programming agreements typically obtain company-wide master affiliation agreements. Consequently, one agreement covers the entire system. Leased access, conversely, can be mandated on a system by system basis (i.e., headend basis). An operator of five systems may find that it has a different leased access request for each system. In this case, the operator must negotiate five leased access agreements, resulting in substantially higher transaction costs than generated by the single company-wide affiliation agreement.

2. Failure To Modify The Rate Formula Will Result In Significant Operator Subsidization Of Leased Access Costs.

The Commission's proposed definition of "opportunity costs" will result in substantial subsidization of leased access programming cost. SCBA estimates the transaction cost for small cable at $2,000 per full time contract. SCBA estimates the cost of transaction costs for part-time carriage will average $1,000. Small cable generally does not have resources to administer leased access. Consequently, much of the early leased access work must be contracted to third party lawyers and consultants. If leased access demand, especially part-time requests, remains steady, operators will likely hire full or part-time personnel to perform some of the leased access functions.

In the beginning, SCBA estimates that small cable will spend between 10 and 20 hours total negotiating full channel, full time leased access arrangements. At an average hourly rate of $150, SCBA estimates that out-of-pocket expenses will range between $1,500 and $3,000 per contract. SCBA expects that the average full time contract will result in out-of-pocket costs to the operator of $2,000 per contract.

The results would not differ significantly even if the leased access administration function is brought in-house. SCBA estimates that the administrator would be paid at least $26,000.[21] Assuming a single head-end system that receives one request for part-time carriage per week, the cost of the in-house administrator would be $500 per leased access request.[22] Additionally, most leased access programmers use either in-house or outside counsel to negotiate their agreements. Consequently, small cable will need to involve outside counsel for negotiation and execution of many agreements. SCBA estimates that outside counsel involvement for a typical agreement would likely remain at least 5 to 10 hours. At $150 per hour, the total cost of outside counsel remains $750 to $1,500. This coupled with the cost of the in-house administrator results in a total transaction cost of $1,250 to $2,000.

While $2,000 may be an insignificant cost to a large system, it can be very high on a per subscriber basis for smaller systems:

---

[21]SCBA members generally pay administrative level employees approximately $20,000 and benefits totaling another 30% ($6,000).

[22]Not only is small cable concerned about the direct cost of entering into the agreement, if the programming is part-time and delivered via tape, the operator will ferry tapes to the various headends. Many small operators have widespread headends with travel time from the closest office frequently taking several hours.

Distribution Of $2,000 Per Transaction Cost	
System Subscribers	**Cost Per Subscriber**
100	$20.00
250	$ 8.00
500	$ 4.00
1,000	$ 2.00
10,000	$ 0.20
50,000	$ 0.04

If an operator received even one part-time request for leased access carriage per week, the transactional cost alone creates a staggering burden. Fifty two requests per year may result in transaction costs as high as $104,000. Equated on a per subscriber, the table below shows the inequity of making small systems bear this leased access cost:

Distribution Of $104,000 Annual Cumulative Transaction Cost	
System Subscribers	**Cost Per Subscriber**
100	$1,040.00
250	$ 416.00
500	$ 208.00
1,000	$ 104.00
10,000	$ 10.40
50,000	$ 2.08

Transaction costs alone, if not recoverable from leased access programmers could easily bankrupt small systems. The Commission must modify its proposal for small cable to include **all** transaction costs associated with provision of leased access.

D. A Programmer Requesting Leased Access Must Pay All Equipment Costs Required To Cablecast the Programming.

1. Headend Technology To Provide Leased Access Results In High Per Subscriber Costs For Small Systems.

The Commission has previously recognized the high per subscriber costs incurred by small systems when adding headend equipment.[23] Compliance with at least the first leased access requests will typically require addition of headend equipment. For example, a satellite fed program could require the addition of a 5 meter satellite dish at an approximate cost of $5,000 to $8,000 and a receiver and modulator at a combined cost of another $4,000. Tape fed programs will require procurement of a tape player at a cost of $5,500 and a real time switcher to insert the program at the appropriate time, at an additional cost of $3,000.

A small system may have to spend between $8,500 to $12,000 to add each leased access channel. For a system with only 500 subscribers, this represents an investment of $17 to $24 per subscriber per channel. For a 100 subscriber system, the cost per subscriber per channel ranges from $85 to $120.

2. Commission Regulations Must Permit Operators A Guaranteed Recovery Of All Technology Costs.

Costs of this magnitude threaten the economic viability of small cable, in direct conflict with Congressional intent.[24] The Commission must establish a methodology that

---

[23] *Sixth Order on Reconsideration, Fifth Report and Order and Seventh Notice of Proposed Rulemaking*, MM Docket 92-266 (released November 18, 1994) ("*Going Forward Order*") (Allowing small systems to increase rates to recover the high per subscriber cost of adding headend equipment in small systems).

[24] *Joint Committee Report* at 51 ("the Committee does not intend to adversely affect the cable operator's economic position....").

guarantees payment of the equipment cost, including the cost of capital, by leased access providers. This can be accomplished by adopting the following plan.

The Commission should require a party requesting leased access to pay for all additional equipment the operator must purchase to accommodate the leased access programmer. While this means that the costs for the first leased access programmers may be higher than subsequent programmers, the Commission cannot require operators to subsidize the costs of leased access. Because small systems have historically had very low demand, if any, for leased access, the Commission cannot assume that headend technology costs can be recovered from future programmers.

The cost of necessary technology can be spread over the life of the leased access contract, so that at least the time value of money is recognized. The Commission should, however, permit operators to require advance deposits of all equipment costs to guarantee performance. Consider a small system owned by a small operator making a significant investment in technology and entering into a contract to provide a programmer with access for one year. If the programmer defaults on payment after one month, the operator recovers only one-twelfth of its investment, threatening the economic viability of small system. Most small operators would have no alternative but to attempt to shift this cost to subscribers. Assuming a 100 subscriber system invested $10,000 in leased access equipment, the operator would have to raise rates by over $7.64 per month.

Congress did not intend either to threaten the economic viability of small cable with leased access nor expose subscribers to the financial risk resulting from the failure of a leased access operator.

III. THE COMMISSION MUST MODIFY ITS RATE FORMULA FOR SMALL SYSTEMS.

Three years ago, the Commission imposed various formulaic methodologies to regulate rates. After implementation, the Commission realized that the formulas failed to consider the unique cost structure and circumstances of small systems owned by small companies. The Commission began by recognizing rate adjustments where small systems incurred fixed costs on a headend basis[25] and the Commission eventually custom tailored a rate methodology for small cable. The Commission must do the same for leased access.[26]

SCBA strongly urges the Commission to consider adopting **<u>all</u>** of the following changes to the rate formula. The changes, however, only make small cable whole for out-of-pocket costs. The changes do not compensate small cable for the value conferred to leased access programmers. To recognize this value, the formula requires major overhaul such as the one proposed by the National Cable Television Association.

A. Systems With 15,000 Or Fewer Subscribers Should Be Permitted To Adjust The Rate Formula.

The same rationale that justified the Commission's decision to provide rate relief for small systems applies to the leased access. Many leased access costs are fixed costs incurred for each system. Both transaction costs and technology costs are generally incurred

---

[25] *Going Forward Order.*

[26] *Sixth Report and Order and Eleventh Order on Reconsideration*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket No. 92-266 (released June 5, 1995) ("*Small System Order*") at ¶54.

on a headend basis. Theses costs distributed over a small system's small subscriber base result in a high per subscriber costs. The same costs spread over a larger system's subscribers often results in a de minimis cost per subscriber.[27]

1. Systems with 15,000 Or Fewer Subscribers Should Qualify For Special Treatment.

The Commission's small system definition of 15,000 or fewer subscribers[28] should apply to leased access rates as well. Leased access opportunities will appear most attractive where an operator has low opportunity costs. As previously discussed, these costs will be lowest where an operator has little or no commercial advertising insertions. Systems with 15,000 or fewer subscribers rarely have commercial advertising insertion.[29]

The 15,000 subscriber measure is also comparable to another measure of small system relief. In conjunction with the "going forward" rules, the Commission allowed per subscriber cost add-ons to recover headend equipment costs. The Commission allowed such add-ons for investments up to $5,000 where the incremental rate pass through was at least $0.01. When computed, systems with up to 7,500 subscribers benefitted from this rule change. The cost of providing headend equipment for leased access will average around $10,000, double the investment addressed by the going forward rules. Using the same

---

[27]*E.g.*, a $15,000 cost spread over 500 subscribers results in a $30 cost per subscriber. The same amount spread over 100,000 subscribers results in a $0.15 amount per subscriber.

[28]47 C.F.R. §76.901(c).

[29]Commercial advertising equipment to allow insertion on four cable networks costs operators approximately $20,000 per headend, making it economically unviable for most small systems to have advertising insertion capabilities. If systems smaller than 15,000 subscribers offer advertising insertions, the revenues are typically low because operators insert advertising on only two or four channels and advertising rates are very low.